(Testimony of Henry Eugene Berman.)

A. The eggs would be either along this entire wall here or in this space there up against the wall and leaving an aisle down the middle.

Q. Are you able to take a piece of chalk, Mr. Berman, and just lightly indicate with a light line the area that you have just mentioned as being normally used for eggs? Will you mark the left-hand area with a little "b-1" on there? Would you also mark on the righthand area a "b-1". May the record indicated, if the Court please, that the witness has indicated on the illustration here the initials "b-1" to indicate the storage space or the place where eggs were placed in this plant?

Now, Mr. Berman, when you were on the plant on Townsend [3154] Street, did you have occasion to observe from time to time if at any time Army inspectors came into the plant?

A. Yes, on occasions I did notice that.

Q. Did you ever notice Army inspectors stamping cases of eggs which had been inspected in the plant? A. Yes, many times.

Q. Generally speaking, where did the Army men make their inspection of eggs?

A. The Army men would usually make their inspections in the candling room.

Q. Did the Department of Agriculture men come into the plant and inspect eggs while you were there? A. Yes, they did.

Q. Where did they usually make their inspections?

(Testimony of Henry Eugene Berman.)

A. They usually would make their inspections right on that shelf.

Q. Indicating the shelf outside the office of Mr. Goddard?

A. Yes; it was part of the platform scale, or right adjacent to it.

Q. Would you please mark "b-2" on the spot you just indicated? May the record show the witness has marked "b-2" on the illustration to indicate the place where he saw during this period on occasions Department of Agriculture men making inspections?

Are you familiar with the office space of Ruby Goddard? A. Yes.

Q. What generally was in that office?

A. There were two large high desks, three drawers to each desk. [3155]

Q. Yes?

A. And one small table on which there was a billing machine.

Q. Were the exterior walls of the office transparent in any way or were they all of wood?

A. No; they were glass from about three foot up.

Q. When a person was in the office could you see outside the plant?

A. You could see all around.

Q. You have mentioned here to the ladies and gentlemen of the Jury something about a glass or partition which was on the upper mezzanine?

A. That's right.

Q. Was the glass partition at the exterior rail

(Testimony of Henry Eugene Berman.)

or banister of the mezzanine or was it on the interior?

A. Well, it was on the interior wall of the mezzanine.

Q. Do I understand your testimony to be the exterior rail or banister of that corridor upstairs was open? A. It was open.

Q. In other words, a person could lean over?

A. Yes.

Q. At any time on occasions while you were in the plant of Nye & Nissen have you been on the mezzanine floor of that plant?

A. Every day.

Q. Have you had occasion on the times you were there to look down into the plant proper?

A. Very often.

Q. How much of the plant could you see if you stood in that hallway and looked over the banister?

A. You could see the entire plant from one end to the other.

Q. Have you had occasion during the time you have been in the [3156] plant of Nye & Nissen to be on the floor of Nye & Nissen, within the last third, and by the last third I mean the third nearer Bluxome Street, of the area of this plant?

A. Yes.

Q. Have you had occasion when in such a position to look up at the mezzanine?

A. Yes, sir.

Q. Can you see into the mezzanine?

A. Yes, sir.

(Testimony of Henry Eugene Berman.)

Q. Now, you have talked here about the various offices on the mezzanine floor. This office that you labelled "Main Office", what was in that office?

A. There were a group of desks in there and a switchboard.

Q. Do you know where the Nye & Nissen safe was during the period that you were on Townsend Street in this plant?

A. Yes, I do.

Q. Will you point out to the ladies and gentlemen of the Jury with this pointer where it was?

A. It was against this wall.

Q. Inside of that main office?

A. Inside, right in the main office.

Q. Will you please mark a small rectangle to indicate the safe of Nye & Nissen in the main office in that particular location where you have just told us about and will you please mark that rectangle, Mr. Berman, with "b-3".

May the record show the witness has marked the location with "b-3" to indicate the position of the Nye & Nissen safe [3157] in the main office of the plant?

I wanted to ask you one or two questions about this mezzanine. You talked about stairs going up there. You have indicated there on the illustration the stairs. Was that the sole means of access and egress from that mezzanine floor?

A. Yes, that was the only entrance and exit there.

Q. Let us go back to this larger diagram, Mr.

(Testimony of Henry Eugene Berman.)

Berman. Approximately how far would you say it was from the end of the candling room to Mr. Ruby Goddard's office, and by the end of the candling room I mean the end nearer Townsend Street?

A. Well, at least one hundred fifty feet or more.

Q. I notice here that you have indicated a uniformity on the righthand side of this diagram for that portion of the area which contained the breaking room, the butter room, the cooler and the freezers (and I will ask if you did that purposely?

A. Yes, that was one straight line.

Q. About how wide was that uniformity?

A. About twelve foot wide.

Q. And how wide was the candling room?

A. I would say approximately twelve foot wide.

Q. So the area between that candling room and the cooler, the butter room and the breaking room, on the opposite side was how big, Mr. Berman, approximately?

A. Pretty close to twenty-five feet wide, possibly a little less.

Q. On a normal day during the time that you were in the plant [3158] of Nye and Nissen in this area where you have designated by "b-1" and on the opposite side "b-1" would there be stores of any commodities?

A. There always would be.

Q. Would there be a large volume of them?

A. Yes, there would.

Q. What commodity?

A. Butter, eggs and cheese.

(Testimony of Henry Eugene Berman.)

Q. Will you resume the stand? Now, all this time, Mr. Berman, during which you were at the plant of Nye & Nissen on Townsend Street, I think you stated this morning you were an employ of the Coast Egg Products Company?

A. That is correct.

Q. During that time did you ever have any inspections on your sales by the Department of Agriculture of the United States?

A. No sir.

Q. During that time did you ever have on sales which you handled any inspection by the officers or the attaches of the Veterinary Corps of the United States Army? A. No.

Q. Did you during that time take any orders from Mr. Moncharsh?

A. I did not. Not that I wouldn't have, but there was no occasion for it.

Q. In other words, you were your own boss, as it was?

A. Yes. Our operation was small and simple.

Q. Can you explain what you mean to say by small and simple?

A. Well, at that time I only had two trucks calling on the city trade and we either sold them eggs in cartons or the same eggs loose. By loose I mean in the cases but not in the cartons. [3159] We sold some of the bakers. We sold frozen eggs and everything was sold in ordinary orderly fashion.

Q. I think you stated this morning that in the

(Testimony of Henry Eugene Berman.)

fall, or October, 1942, your establishment and your organization, the Coast Egg Products, and Nye & Nissen moved out to 17th and Missouri Streets; about when?

A. Yes, I think it was about September, 1942.

Q. Are you familiar with the general floor plan and the general appearance of the plant on 17th and Missouri Streets from the fall of 1942 when you people first moved there, until the present date?

A. Very much so.

Q. Have you had occasion to be there on the plant at 17th and Missouri Streets during that time?

A. Every day.

Mr. Sullivan: Mr. Clerk, will you please mark this as Defendants' Exhibit for Identification next in order.

(The photograph was marked Defendants' C-D for Identification.)

Mr. Sullivan: Q. Mr. Berman, I will show you Defendants' CD for Identification and I will ask you to examine it. Have you examined it?

A. Yes, I have.

Q. Do you recognize that picture which is reproduced in that photograph?

A. I certainly do.

Q. What is it?

A. It is our present premises at 17th and Missouri.

Q. Is this picture, Defendants' Exhibit CD for Identification, [3160] a fair and accurate reproduction of the plant of Nye & Nissen?

(Testimony of Henry Eugene Berman.)

A. A remarkably good one.

Mr. Sullivan: If your Honor please, I offer Defendants' Exhibit CD for Identification in evidence.

The Court: It will be admitted and marked.

(Defendants' Exhibit CD for Identification was thereupon received in evidence.)

Mr. Sullivan: Q. Now, I will ask you if you will just look at Defendants' CD in evidence. Mr. Berman, you stated that that picture is a fair and accurate reproduction of the plant. Do you have in mind that the presence of the trucks in front of the plant, of course, would not always be the same?

A. That is correct.

Q. With that exception, as far as the plant itself is concerned, it is your testimony that that is an accurate picture of it? A. It is.

Mr. Sullivan: May I have permission at this time, if your Honor please, to pass this exhibit in evidence, Defendants' CD in evidence, to the ladies and gentlemen of the Jury?

The Court: You may.

Mr. Sullivan: If the Court please, I am going to make a similar introduction of four other pictures and I would like to have all these four pinned on the board there, because I am going to ask the witness to explain certain things about the features of the pictures. May I have your Honor's permission [3161] to affix Defendants' exhibit——

The Court: Where are the other four pictures?

Mr. Sullivan: I have them right here.

(Testimony of Henry Eugene Berman.)

The Court: I think it would be well to introduce them now.

Mr. Sullivan: Very well. I will ask the Clerk at this time to mark them as Defendants' Exhibits for Identification next in order.

Mr. Pratt: I think perhaps we can facilitate that. Let me look at them and you can offer them all without separate markings for identification.

Mr. Sullivan: All right.

Mr. Pratt: I take it these pictures were taken recently?

Mr. Sullivan: Yes, I think they were. That may be indicated on the reverside side. Yes, "March 13, 1946, taken by Gabriel Moulin Studio."

Mr. Pratt: The cases, apparently of eggs, or what not, that appear in the protograph, just happened to be there at the time?

Mr. Sullivan: That is correct. The purpose of the exhibit, Mr. Pratt, is to indicate the general interior and exterior of the premises on 17th and Missouri, which we could have done had we been there in the same way for the premises on Townsend Street.

Mr. Pratt: So the cases of eggs or other products that [3162] would appear in the photographs mean nothing in connection with the trial of this case; is that right?

Mr. Sullivan: Not that I know of. Do you know any reason, Mr. Faulkner?

Mr. Faulkner: The case of eggs in these pictures do mean something. In other words, the cases

(Testimony of Henry Eugene Berman.)

and the Department of Agriculture marks and the Veterinary Corps marks on these various cases are typical of egg cases in 1946 and in 1944. In other words, you will find there any number of cases of eggs that have a Veterinary Corps Stamp on them that are secondhand empty cases bought from the Army in many instances and the marks seem unimpaired——

Mr. Pratt: I don't like to make objection to exhibits of this sort, but I would like to have it understood that as far as these photographs are concerned as evidence in the case the reference is only to the structure, the arrangement of the building, and has nothing to do with the products or stock of goods that appear in the pictures.

Mr. Faulkner: Well, we won't accept the limitation placed upon the photographs——

Mr. Pratt: Then, I will object to it.

Mr. Faulkner: They are not offered in evidence in the sense you offer evidence, as ordinary exhibit; they are offered as illustrative of a situation. Of course, the floor plan remained the same, but some of these cases are illustrative [3163] of the identical——

The Court: What cases?

Mr. Faulkner: Well——

Mr. Pratt: There is no evidence of those cases and therefore I object to them at this time because they simply serve no——

Mr. Faulkner: Mr. Pratt has interrupted Mr.

(Testimony of Henry Eugene Berman.)

Sullivan in laying the foundation for these pictures. In other words, some of these pictures——

The Court: Does the record disclose these pictures were taken in the month of March of this year?

Mr. Faulkner: That is correct.

The Court: All right. There is no showing made in relation to any egg cases or anything.

Mr. Faulkner: That is true. Of course we have asked no question yet.

Mr. Sullivan: We can lay a foundation.

The Court: You are asking these photographs go in evidence. If there is any question about it you will have to limit them.

Mr. Faulkner: Yes. But Mr. Pratt made the suggestion that they not be marked for identification and then he made an objection.

The Court: There is nothing before the Court. Proceed with the case. [3164].

Mr. Sullivan: Will you please mark these in the order in which I have laid them out here as Defendants' exhibits for identification, Mr. Clerk?

(The four photographs were thereupon marked Defendants' Exhibits CE, CF, CG, and CH, for Identification.)

Mr. Sullivan: Q. Now Mr. Berman, were you during the period from the time that Nye & Nissen moved to 17th and Missouri Streets in September of 1942, as you have testified, up to the present date—have you been familiar with the interior of the premises there?

(Testimony of Henry Eugene Berman.)

A. On Townsend Street?

Q. No. A. On Missouri Street?

Q. Yes.

A. Yes, I was familiar with it.

Q. Have you been familiar, for instance, with the interior of the ice boxes and the freezer?

A. Yes.

Q. Have you been familiar with the executive offices there? A. Yes.

Q. Have you been familiar, and have you been in all of those places throughout the entire interior of the Nye & Nissen plant at 17th and Missouri Street on many occasions?

A. Many, many times.

Q. And during the period during the year 1944, have you had occasion to observe cases of eggs stacked on the interior of the plant of Nye & Nissen at 17th and Missouri?

A. Countless thousands of them.

Q. Have you had occasion during the time you have been inside [3165] that plant and in the places where those eggs have been stamped and observed the markings on the cases of eggs?

A. Yes, I have.

Q. Were there any Department of Agriculture marks on cases that you have observed on occasions? A. Yes, sir.

Q. Would there on those same occasions be other markings? A. Many.

Q. In other words, would there be, besides the Department of Agriculture marks, for instance,

(Testimony of Henry Eugene Berman.)

stamps of the United States Army Veterinary Corps inspection stamp? A. Yes.

Q. On some cases——

Mr. Pratt: I will object. I would like to get the foundation.

Mr. Sullivan: I am laying a foundation, your Honor, to show during the period from 1944, and we will go back even to 1943, up until the present date, there has been a constant condition out there, for instance, a condition in which old secondhand cases were used with various markings on them and on which the same case might have several marks of the United States Department of Agriculture—just a minute, Mr. Pratt.

Mr. Pratt: Is Counsel testifying?

Mr. Sullivan: No. Your Honor, Mr. Pratt has asked me to declare the purpose of the testimony.

Mr. Pratt: No, I have not, as to the date that he is talking about. [3166]

The Court: Read the question.

(Question read.)

The Court: That is too general. Fix the time.

Mr. Sullivan: Q. During the time, during the calendar year 1944, and the calendar year 1945 and 1946 to date, have there been used cases of eggs on your floor in the Nye and Nissen plant——

Mr. Pratt: I object to that.

Mr. Sullivan: Withdraw the question.

Q. During the years 1942 to 1944, inclusive, at the plant of Nye & Nissen at 17th and Missouri, were there used cases on the plant floor?

(Testimony of Henry Eugene Berman.)

A. At all times.

Q. Have you had occasion to observe those cases?

A. Yes, I have.

Q. Can you give the ladies and gentlemen of the Jury a short explanation of what you saw on the occasions that you saw the egg cases?

Mr. Pratt: I would like to ask to have the time fixed.

Mr. Sullivan: During the years 1942, 1943 and 1944.

Mr. Pratt: I will object to it.

The Court: I will allow a reasonable latitude, but it is general in scope. However, I will allow the question.

Mr. Sullivan: Do you understand the question?

A. I believe I do. At all times on our floor during that period there was a conglomeration of secondhand cases. [3167] Sometimes they would come back from the city trade which we had sold in the first place, others that we purchased from secondhand egg case vendors and others that had come in from various army posts and camps; other cases were miscellaneous with various label conditions. They were wood and fiber both. They would bear not only one inspection stamp but sometimes many inspection stamps. Some of them would be inspection stamps——

Mr. Pratt: I don't know what question this is in response to.

Mr. Sullivan: This is a direct explanation of

(Testimony of Henry Eugene Berman.)

what he saw when he observed these secondhand cases.

Mr. Pratt: He was not asked for any explanation.

Mr. Sullivan: I did ask him specifically for an explanation.

Mr. Pratt: Well, I withdraw my objection. Go ahead.

Mr. Sullivan: Please proceed.

A. They would contain stamps of the Department of Agriculture of various dates and from various states. They would also bear various type of Veterinary Corps stamps from various places and on various dates. Sometimes the stamped case would contain both types of stamps; sometimes as high as three stamps on the same case.

Q. On those occasions have you ever seen on those cases any stamps without marks on them being defaced, on some of the [3168] cases?

A. Yes, very many.

Q. I will now show your Defendants' Exhibit CE for Identification, and I will ask you to examine it, please. Have you examined it?

A. Yes, I have.

Q. Do you recognize the picture which you see there? A. Yes, I do.

Q. What is it, please?

A. It is a picture of the floor of our plant looking from one corner of the plant to the wall which is on the Missouri Street side.

Q. Does that picture give a fair and substantial

(Testimony of Henry Eugene Berman.)

reproduction of what you have just testified it was, the interior of that plant, during the period from the time that Nye & Nissen had been there in 1942 until the present date?

A. Yes, with the exception that there may be varying amounts of merchandise on the floor at various times.

Mr. Sullivan: I offer Defendants' Exhibit CE for Identification in evidence.

Mr. Pratt: I have not the slightest objection to this picture as long as it does not include as far as the trial of this case is concerned the various cases that are here. This picture was taken a day or two ago, perhaps a week ago, and here are a lot of cases of one sort or another which perhaps bear stamps. I don't know what they are, but they can't have anything to do with the issues of this case at the times laid in the indictment, as to this picture, a general view of the [3169] interior of the plant at the times laid in the indictment, and I assume it is that. I haven't the slightest objection——

Mr. Faulkner: The picture was admitted as an illustration of the situation it purports to portray. In addition to that, the testimony adduced by the Government in this case from Colonel Hand was to the effect that the Army uniformly rejected all Veterinary Corps stamps on cases where they are sold in the secondhand cases. The testimony of this witness is that——

(Testimony of Henry Eugene Berman.)

The Court: That is a fact in the testimony. It has no relation to this testimony. His testimony?

Mr. Faulkner: Yes, his testimony.

The Court: But the photograph taken this month and introduced to show evidence in relation to varying conditions in that warehouse has no relation to his testimony.

Mr. Faulkner: His testimony was on a general subject, not confined to the limits of the cross-examination.

The Court: Well, produce any testimony to meet it.

Mr. Faulkner: There it is.

The Court: From a photograph taken——

Mr. Faulkner: No. A witness has testified in this case, right now, contrary to Colonel Hand. He has testified that uniformly Army cases came in to the plant of Nye & Nissen with Veterinary Corps stamps on them unmarked and undefaced and he points out in that picture that those cases in that picture [3170] there are illustrative of the type of cases that continuously came in to their plant in 1943, 1944 and 1945. It is the identical situation when witnesses were called by the Government and took a box of eggs here that they had never seen in their lives before and used that as a comparison to something they saw on——

The Court: You may go and get a box and do likewise.

Mr. Faulkner: Well, the point is the picture is illustrative of what the witness saw daily in those

(Testimony of Henry Eugene Berman.)

years and there is a case with a Veterinary Corps stamp undefaced and the witness says that is the kind of case that has been in his plant in constant numbers over a period of time and it is merely illustrative on that testimony at the time the picture is taken and we submit it is proper to illustrate from the testimony——

Mr. Pratt: If the Court please, this photograph apparently was made after arranging a lot of cases of one sort or another, particularly some having some sort of stamps.

The Court: You may inquire as to the foundation if there is any question.

Mr. Faulkner: Yes.

Mr. Sullivan: May I ask one question. Mr. Berman, directing your attention to Defendants' CE for Identification and calling your attention to the background of that picture and particularly to certain cases that you see reproduced [3171] there, is what you see there generally illustrative of the situation that you testified to that existed with respect to the used cases in the plant of Nye & Nissen during the period you just testified to? A. Yes, sir.

Mr. Sullivan: I will offer Defendants' Exhibit CE for Identification in evidence.

Mr. Pratt: May I ask a question?

The Court: Yes.

Mr. Pratt: Mr. Berman, you assembled these cases on the floor of your plant before the picture was taken?

A. We most certainly did not.

(Testimony of Henry Eugene Berman.)

Q. You gathered together cases that had various marks and stamps on them so they would appear in the foreground of the photograph?

A. We did not.

Mr. Pratt: Nevertheless, if the Court please, this is——

The Court: Who took these photographs?

Mr. Faulkner: I will explain how that picture was taken.

The Court: You have not laid a foundation for putting the photograph in evidence.

Mr. Faulkner: Mr. Berman was there.

The Court: Well, there is no showing made here——

Mr. Faulkner: Well, we will develop it.

The Court: No foundation has been laid for these photographs.

Mr. Sullivan: Q. Mr. Berman, directing your attention [3172] again to Defendants' CE for Identification, do you recall when these pictures were taken?

A. Yes, I do. I think it was a week ago last Monday.

Q. It is a fact, is it not, that Mr. Faulkner arranged with Mr. Gabriel Moulin's Studio to go out and take these pictures? A. I think he did.

Mr. Pratt: I object to that as leading.

The Court: Objection sustained.

Mr. Sullivan: Q. Did you see these pictures taken on that occasion? A. I did.

Q. By whom were they taken?

(Testimony of Henry Eugene Berman.)

A. A man from Gabriel Moulin's Studio.

Q. Were you present when all pictures were taken? A. At all times.

Q. Were you present when the picture which purports to be an accurate reproduction of the background of the interior of the plant as indicated in Defendants' Exhibit CE for Identification was taken, were you present when that picture was taken? A. I was there.

Q. And does that picture that you now hold in your hand which is Defendants' Exhibit CE for Identification, is that a fair and accurate reproduction of the plant and the background and what that picture purports to represent on March 13, 1946, or a week ago last Monday, as you testified?

A. It is. In fact, a case of eggs was moved in order to enable the [3173] photographer to take this picture.

Mr. Sullivan: I will renew the offer.

Mr. Pratt: I will object to it.

The Court: I will allow it to go in evidence.

(Defendants' Exhibit CE for Identification was thereupon received in evidence.)

Mr. Sullivan: I will now show you Defendants' Exhibit CF for Identification, Mr. Berman, and ask you if you recognize what you see in that picture?

A. I do.

Q. What is it?

A. It is a picture of the same plant taken from the opposite corner.

Q. Was that taken at the same time?

(Testimony of Henry Eugene Berman.)

A. Within a few minutes of the other picture.

Q. Were you present? A. I was.

Q. Who took it? A. The same man.

Q. Does that picture indicated on Defendants' Exhibit CF for Identification, is it an accurate and fair representation of what it purports to show?

A. It is.

Q. With reference to this exhibit I notice, Mr. Berman, in this picture there were certain cases stacked there on the floor of the plant. Are those cases illustrative of the situation to which you testified with respect to used cases? A. Exactly.

Mr. Sullivan: I offer this Defendants' CF for Identification in evidence, if your Honor please.

The Court: Admitted and marked.

(Defendants' Exhibit CF for Identification was thereupon received in evidence.)

Mr. Sullivan: I now hand you Defendants' Exhibit CG for Identification, Mr. Berman, and I ask you to look at that picture. Have you looked at that picture? A. I have.

Q. Do you recognize it? A. Yes, I do.

Q. What is it?

A. It is the portion of the plant that is used by City Sales.

Q. Is that in the plant of Nye & Nissen at 17th and Missouri Streets in San Francisco?

A. Yes, it is an integral part of the plant.

Q. Were you present when that picture was taken? A. Yes.

Q. Who took it?

(Testimony of Henry Eugene Berman.)

A. The same man that took the other pictures.

Q. When? A. The same time.

Q. Was that picture which you hold in your hand, is it a fair and accurate reproduction of what it purports to be? A. It is.

Q. I notice some cases reproduced in this picture, Mr. Berman, and I ask you if the cases you see reproduced there are illustrative of the situation to which you testified a short time ago about used cases in the plant at 17th and Missouri?

A. They are, even to the extent that one case in here being upside down. [3175]

Mr. Sullivan: I offer this Defendants' CG for Identification in evidence.

The Court: Admitted and marked.

(Defendants' Exhibit CG for Identification was thereupon received in evidence.)

Mr. Sullivan: Q. I now hand you Defendants' CH for Identification, Mr. Berman, and I ask you to look at that picture. Have you examined the picture? A. Yes, I have.

Q. Do you recognize it? A. Yes.

Q. What is it?

A. It is a picture taken of Mr. Goddard's office and the immediate surroundings taken from the front of the plant looking towards the 17th Street portion of the building.

Q. In the interior of the plant at 17th and Missouri? A. Yes, the interior.

Q. Is that picture a fair and accurate reproduction of what it purports to be?

(Testimony of Henry Eugene Berman.)

A. Yes, a very good one.

Q. Were you present when that picture was taken? A. I was.

Q. Who took it?

A. The same man who took the other pictures.

Q. When? A. The same morning.

Q Is it a fair and accurate reproduction of the picture you saw taken that morning?

A. Yes. May I make a correction? The pictures were not taken in the morning; I think they were taken immediately after lunch. [3176]

Q. I call your attention to Defendants' Exhibit CH for Identification, Mr. Berman, and calling your attention particularly to a stack of egg cases in the background there I will ask you if that situation is illustrative of the situation you testified to? A. Yes, even to this minute.

Mr. Sullivan: I offer Defendants' Exhibit CH for Identification in evidence and ask it to be properly admitted and marked.

The Court: Admitted and marked.

(Defendants' Exhibit CH for Identification was thereupon admitted in evidence.)

Mr. Sullivan: May I at this time, if your Honor please, pass among the ladies and gentlemen of the Jury the last exhibits in evidence which you admitted?

The Court: You may. We will take a recess for a few minutes.

Mr. Sullivan: To save time, may I have your.

(Testimony of Henry Eugene Berman.)

Honor's permission to fix these during the recess on the board?

The Court: Just pin them up on the blackboard.

Mr. Pratt: As long as they are put up with thumb tacks so that I can take them down, I have no objection.

(Recess.) [3177]

The Court: You may proceed.

Mr. Sullivan: Mr. Clerk, will you mark this as a Defendant's Exhibit for identification next in order?

(The photograph was marked Defendants' Exhibit CI for Identification.)

Mr. Sullivan: Q. Mr. Berman, I will show you Defendants' Exhibit for Identification CI, and ask you to examine it, please. Have you examined it?

A. Yes, I have.

Q. Do you recognize that picture?

A. Yes, I do.

Q. What is it?

A. It is a picture taken of another point of vantage in our place by the same photographer at the same time.

Q. On the same day? A. On the same day.

Q. Were you present?

A. Yes, I was present when this picture was taken.

Q. Does that picture give one a fair and substantial reproduction of what the background of the picture purports to be?

(Testimony of Henry Eugene Berman.)

A. It is a picture taken exactly as it was at that time.

Q. Is that picture with respect to the cases of eggs that you see stacked in the background of that picture illustrative of the situation which prevailed during the period that you testified with respect to second-hand cases? A. Yes, it is.

Mr. Sullivan: I offer this Defendants' Exhibit CI for Identification in evidence, if the Court please.

The Court: It may be admitted and marked.

(Defendants' Exhibit CI for Identification was thereupon admited in evidence.)

Mr. Sullivan: I also ask permission to affix it to the blackboard temporarily in the same way as the other exhibits.

Mr. Faulkner: I might ask the privilege, before we rest our case, after looking at these pictures, it would be to the advantage of everybody to ask the Moulin people to maybe blow them a little larger, because you can't read what is on there without the aid of a magnifying glass. We will try to do that and substitute them, your Honor, so they will be clear for everybody.

The Court: The pictures are there. You can hand them to them if it is necessary.

Mr. Sullivan: Mr. Faulkner has just reminded me that I have neglected the ladies and gentlemen of the jury with respect to this picture, your Honor, and I will ask permission to pass the picture among the ladies and gentlemen of the jury at this time.

(Testimony of Henry Eugene Berman.)

The Court: Very well.

(Defendants' Exhibit CI was thereupon passed among the jury.)

Mr. Sullivan: Mr. Hippeli has requested to examine this, if the Court please. May we have the court's indulgence for a few moments?

Q. Mr. Berman, as I was saying just before I passed this last [3179] exhibit to the ladies and gentlemen of the jury, in giving you a couple of these exhibits I probably failed to notice that there were on Exhibit CE in evidence and Defendants CF in evidence some small what appear to be square cases, and so there won't be any confusion in the minds of the jury as to what we have maintained there or what you have testified to being illustrative of an egg crate condition and any other condition, will you please state for the purpose of the record what those square boxes are on Defendants' Exhibits CE and CF?

A. Those boxes are boxes of Cheddar cheese packed in new wooden crates.

Q. When you talked about certain of the physical evidence of those pictures being illustrative of a condition, did you have that cheese in mind?

A. No, we were talking about egg cases.

Q. Just by way of explanation, from an examination of the cheese boxes in Defendants' CE and CF, are you able to state to this jury whether those are used or new boxes? Would you like to come down and look at them?

A. I can see the picture fairly well from here,

(Testimony of Henry Eugene Berman.)

but I do happen to know that those are brand new cheese boxes.

Q. When cheese was being handled in your plant during the period from 1942 to 1944, the end of the calendar year 1944, did the cheese come in new boxes or in used boxes usually?

A. No, they came in used boxes, as a rule. [3180]

Q. In used boxes? A. Yes, sir.

Q. Do you know a man by the name of Henry Pineda? A. Yes, I do.

Q. You saw him here in the court, didn't you?

A. I did.

Q. Was he down in the plant at Townsend street when you were down there, as you have testified here today? A. Yes, he was.

Q. Mr. Berman, Mr. Pineda testified in this courtroom that in the summer of 1941 there was an incident which occurred on pier 16 where a man by the name of Harry Smiley was unloading some eggs. There was a Mr. Andrade, a Mr. Pineda, who was the witness, and yourself, and Mr. Moncharsh. Do you remember hearing Mr. Pineda testify to that incident in this courtroom?

A. Yes, I remember the incident.

Q. Do you recall being down at Pier 16 at the time in the summer of 1941 when Mr. Pineda testified that you were there? A. No, I do not.

Q. Were you ever down to the piers along the waterfront at approximately the same time, say, in the year 1941?

A. It is very possible that I was.

(Testimony of Henry Eugene Berman.)

Q. Do you recall any occasion or occasions upon which you were down along the waterfront in the summer of 1941?

A. I can't place the exact time, whether it was the summer of 1941 or not, but I have been along the waterfront on many occasions.

Q. Do you know Mr. Harry Smiley?

A. Yes, I know Harry Smiley.

Q. Who is Harry Smiley?

A. Harry Smiley is a man formerly in [3181] our employ who drove the egg truck and trailer from Petaluma to San Francisco.

Q. For what purpose?

A. Transporting merchandise both ways.

Q. Did you ever see on any occasion at or about this time Harry Smiley with this truck on the waterfront? A. It is possible that I did.

Q. Do you recall an occasion?

A. I can't recall a particular occasion.

Q. Do you recall any occasion?

A. Yes, I recall many occasions.

Q. Did you ever go down to meet Harry Smiley at the waterfront? A. Yes, I probably have.

Q. Do you recall for what purpose or purposes you went down to meet Harry Smiley at the waterfront? A. Yes, I believe I do.

Q. Will you tell us, please, just for what reasons on any occasions you went to meet Mr. Harry Smiley at the waterfront?

A. At the request of somebody in Nye & Nissen —who I can't say for sure—but it might have been

(Testimony of Henry Eugene Berman.)

any one of a number of persons—I would go to the hiring hall.

Mr. Pratt: When was this?

Mr. Sullivan: At any time.

The Court: Fix the time.

Mr. Sullivan: Q. Can you fix the time upon which you would do the things that you were just about to tell these ladies and gentlemen of the jury upon which you would meet Mr. Harry Smiley, approximately, if you can? Can you put it [3182] in a year?

A. Yes, I believe in the summer of 1942.

Q. In the summer of 1942, and did you meet Mr. Harry Smiley on the waterfront at that time?

A. Yes, I did.

Q. Did you ever unload his truck for him on that occasion?

The Court: Time, place and persons present.

Mr. Sullivan: I will withdraw the question.

Q. In the summer of 1942, would Mr. Pineda have still been in your employ, incidentally?

A. I believe he was. I can't say for sure.

Q. At that time, in the summer of 1942, on the occasion that you recall, who were present at the waterfront when you met Mr. Smiley?

A. I can't say to that.

Q. Mr. Smiley?

A. Mr. Smiley was there, I know.

Q. Why did you go to the waterfront?

A. I would go to the waterfront for the express purpose of transporting some lumpers to help Mr.

(Testimony of Henry Eugene Berman.)

Smiley unload that truck at some wharf along the waterfront.

Q. Did you unload the truck?

A. No, that was not within the scope of my employment.

Q. Did you see the truck unloaded on the occasion that you mentioned?

A. I may have been there when they first started to unload the truck.

Q. From your observation, just what happened when the truck was being unloaded, if you remember? A. Nothing happened.

Q. Was there anything irregular or out of the ordinary in the [3183] course of unloading the truck, that you observed?

A. Unloaded the truck like anybody would unload the truck.

Q. Do you recall any other occasion or, if you do not, just tell us?

A. Not that I can fix the time and place for.

Q. Mr. Pineda testified in this court with respect to the same incident I called to your attention, Mr. Berman, that Mr. Moncharsh came down and had something to do with the unloading of that truck, and I will ask you this question: Did you ever see Mr. Moncharsh on the waterfront of San Francisco on any of the piers?

A. No, I never have.

Q. Did you ever see him unload a truck along the waterfront at any time? A. No, sir.

Q. As a matter of fact, during the time that you

(Testimony of Henry Eugene Berman.)

mentioned to me, the summer of 1942, what was your usual routine in connection with the premises here on Townsend Street?

A. I was an outside salesman at that time.

Q. Mr. Pineda testified in this courtroom, Mr. Berman, that in early 1942—and I can't give it to you any more definitely because he did not give it any more definitely—in early 1942 there was a load going down in a truck to a wharf which he described as Fisherman's Wharf, or an Army pier near Fisherman's Wharf, and when the load was being unloaded there was present himself, Mr. Pineda, you, Mr. Berman, Mr. Ruby Goddard, one of the defendants, and a couple of drivers whom he could not name and did not name; and I will ask you do you ever recall [3184] that transaction having happened? A. No, I do not.

Q. Do you recall ever having participated in any transaction that corresponds to that?

A. No, I do not.

Q. Mr. Pineda testified with respect to that transaction, Mr. Berman, that while you were present Mr. Ruby Goddard told the men who were going with that truck to do the same with that load that they had purportedly done on another load, namely, to put some stamped cases when they got on the pier around the outside of a pile of eggs and put some unstamped cases in the middle. I will ask you, Mr. Berman, with reference to the prefatory remarks I made to that question, if on that occasion you heard Mr. Ruby Goddard give any such in-

(Testimony of Henry Eugene Berman.)

structions or was anything of that nature stated to anybody in connection with that load?

A. I never did.

Q. Did you ever hear of that load?

A. I do not even know what load he is talking about.

Q. Did you ever hear him give any instructions at any time that sounded like that?

A. No, I did not.

Q. Mr. Pineda also stated in this courtroom, Mr. Berman, that on two occasions you worked nights and that on one of those occasions in August, 1941 you came back at night and you helped, to put it in substance, to switch some eggs which were in wire-strapped cases at the plant of Nye & Nissen. Do you remember his testifying along those lines?

A. Yes, I remember his testimony. [3185]

Q. And he stated that you came back in the evening, and I think some other employees came back in the evening to that plant, and Mr. Moncharsh came back to that plant; and I will ask you, Mr. Berman, if on any occasion in the month of August, 1941, you ever participated in any transaction which might correspond to that which Mr. Pineda talked about?

A. I do not ever remember having worked nights at Townsend Street.

Q. Did you ever work at night in November of 1941?

A. The statement I just made would include November, too.

(Testimony of Henry Eugene Berman.)

Q. Mr. Pineda testified in this courtroom, Mr. Berman, that in the month of January, 1940—and I can't give you any more particular date because he did not—you were present at the Merchants Ice & Cold Storage house in San Francisco in connection with the handling of a certain lot of storage eggs which were in storage there, and there were present at that occasion Mr. Smith, Mr. Nix, Mr. Andrade, Mr. Pineda, and probably some other persons, and I will ask you if you ever participated in any such transaction? A. I did not.

Q. Were you present with those men that I have just named in the Merchants Ice & Cold Storage house at that time?

A. No, I am certain I was not.

Q. Were you ever present with Mr. Smith and the other men I have named in any transaction which would correspond to the transaction delineated by Mr. Pineda—were you ever present at the Merchants Ice & Cold Storage house?

A. Not under [3186] those circumstances.

Q. You have visited there, have you not?

A. I have been at the Merchants Ice & Cold Storage house, yes.

Q. Mr. Berman, do you know Mr. Thomas Andrade, who appeared in this courtroom?

A. I do.

Q. Was he down at the plant of Nye & Nissen on Townsend Street when you were?

A. Yes, he was.

(Testimony of Henry Eugene Berman.)

Q. Mr. Andrade was not at the plant on Missouri Street, was he, Mr. Berman?

A. No, I think he left our employ while we were still on Townsend Street.

Q. Mr. Andrade testified in this courtroom that sometime in the year—I will give it to you exactly, Mr. Berman—that on various occasions, not any particular year, but on various occasions after 1938 he saw a stamp in your possession which was not an authentic stamp of the United States Department of Agriculture, and I will ask you if you ever had in your possession at the time Mr. Andrade indicated, a spurious or counterfeit stamp of the United States Department of Agriculture.

A. I certainly did not.

Q. Did you ever at any time in your life have in your possession or use any kind of a stamp of the United States Department of Agriculture which was not an authentic stamp of the United States Department of Agriculture? A. I did not.

Q. Did you ever use a stamp of the United States Department of Agriculture?

A. Many times. [3187]

Q. Did you do that on Townsend Street?

A. Yes, even on Townsend Street.

Q. And will you tell these ladies and gentlemen of the jury under what circumstances you used the stamp of the United States Department of Agriculture on Townsend Street?

A. Yes. Upon assisting or upon the completion of the Department of Agriculture inspection by a

(Testimony of Henry Eugene Berman.)

Department of Agriculture inspector, they would very often ask one of the employees if they would kindly stamp up a lot of eggs upon which they were completing their inspection. They would hand us the stamp, and their own stamp pad, and we would very cheerfully oblige and stamp the cases of eggs indicated.

Q. Did they make the suggestion to you to use the stamp? A. Yes, they did.

Q. Did you then upon their suggestion use that stamp to stamp a lot of eggs?

A. Yes, I would.

Q. Did you ever stamp a lot of eggs other than the ones they indicated to you to be stamped?

A. I did not.

Q. Did you ever see Mr. Nix, who has been mentioned in this case, use a stamp of the Department of Agriculture under similar conditions?

A. Yes, many times.

Q. Have you ever seen Mr. Andrade, if you remember?

A. I can't remember much about Mr. Andrade. He was a driver and was outside most of the time.

Q. How about Mr. Goddard?

A. Yes, many times. [3188]

Q. How about Mr. Menges?

A. Well, not as often as anybody else, because he would be down at the other end of the floor taking care of his job in the candling room.

Q. But have you ever seen him use one?

A. Yes, I think I have.